

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

#COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-422

T.M.

vs.

R.K.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

Following a hearing after notice, a District Court judge permanently extended a harassment prevention order pursuant to G. L. c. 258E in favor of T.M. against R.K. R.K. appeals, arguing that the c. 258E harassment prevention order was improperly extended.¹ We are constrained to agree and vacate the order.

Background. We summarize the evidence presented before the judge. In 1991, the Boston Water and Sewer Commission (BWSC) employed both T.M. and R.K. T.M. supervised R.K. while at BWSC. On July 23, 1991, BWSC laid off R.K. The record does not reflect any communication between R.K. and T.M. for nearly

¹ R.K. did not notice appeals from either the initial entry of the harassment prevention order in 2016 or its one-year extension in 2017. R.K. only appeals from the permanent harassment prevention order entered on February 27, 2018.

twenty-one years, until June 25, 2012, when R.K. sent T.M. a letter to T.M.'s home (first letter). In that letter, R.K. characterized T.M. as being part of the "cabal that fired [him from BWSC] for sport." In pertinent part, the letter stated:

"I recently thought of how you piously condemned people who earn their daily bread by selling alcohol, then you happily and most self-righteously fired good hard-working people, people who supported families, just because it gave your cabal pleasure.

"Now that you are in the 6th decade of life, I want to ask you, 'Do you ever feel bad about the hurt and pain you caused? Do you ever think of the lives your cabal disrupted? Do you think of yourself as a sanctimonious hypocrite for damning those who peddle alcohol while you blithely destroy families by dismissing their breadwinners with a wave of your hand?[']"

T.M. brought the first letter to the Lexington Police Department and an officer contacted R.K.

On December 30, 2015, R.K. sent T.M. another letter (second letter), which demonstrated that R.K. had been researching T.M.'s business and personal records, as well as the records of other BWSC managers who R.K. alleged were part of the "cabal."

R.K. ended his letter, stating:

"Lastly, according to public records, you have not fared well, multiple mortgages, an insignificant consulting business, etc. Are all these occurrences spurious relationships or justice, I will let you ponder this and other matters as you can think . . . on your sins."

Upon receipt of the second letter, T.M. sought and, after a hearing at which both parties were present,² obtained a one-year c. 258E harassment prevention order on January 28, 2016. On January 27, 2017, T.M. sought an extension and, after another hearing at which both parties were present, the judge extended the harassment prevention order for another year, to January 26, 2018. On January 26, 2018, a judge extended the c. 258E harassment prevention order for one month. On February 27, 2018, upon T.M.'s request, and following another hearing at which both parties were present, the judge extended the c. 258E harassment prevention order permanently. R.K. timely appealed.

Discussion. When reviewing an extension of a c. 258E harassment prevention order, even where the defendant did not appeal the initial order, "a plaintiff must make the same showing as required in the initial hearing." Gassman v. Reason, 90 Mass. App. Ct. 1, 6 n.6 (2016). Therefore, when reviewing a c. 258E harassment prevention order, "we consider whether the judge could find, by a preponderance of the evidence, together with all permissible inferences, that the defendant committed acts that constituted one of the enumerated forms of harassment." A.S.R. v. A.K.A., 92 Mass. App. Ct. 270, 274 (2017). As relevant here, harassment is defined as "[three] or

² R.K. was represented by counsel.

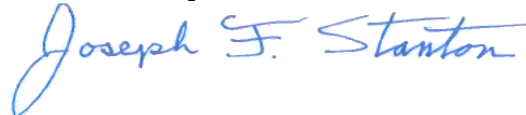
more acts of willful and malicious conduct aimed at a specific person committed with the intent to cause fear, intimidation, abuse or damage to property and that does in fact cause fear, intimidation, abuse or damage to property." G. L. c. 258E, § 1.

At the hearing on T.M.'s original c. 258E complaint for protection from harassment, the judge concluded that there were at least three acts of harassment: (i) the first letter; (ii) the second letter; and (iii) "the gathering of personal information about somebody that [R.K.] hasn't spoken to in over 25 years," which R.K. detailed in the second letter. However, as the Supreme Judicial Court recently held, "[o]ne continuous act cannot be parsed into its constituent parts so as to satisfy G. L. c. 258E, § 1." F.K. v. S.C., 481 Mass. 325, 332-333 (2019) (defendant's singular song cannot be divided into "many 'individual lyrics' for the purpose of finding separate acts of harassment"). Thus, we conclude that the second letter could not be parsed into several acts. While we recognize why T.M. would find the letters unsettling, we are constrained by the statutory requirement of three separate acts of harassment. Because the record does not reflect three acts, there was insufficient evidence to support the permanent extension of the

c. 258E harassment prevention order.³

Permanent harassment
prevention order dated
February 27, 2018, vacated.

By the Court (Blake, Henry &
McDonough, JJ.⁴),



Clerk

Entered: August 7, 2019.

³ Given our conclusion, we need not address R.K.'s argument under the First Amendment to the United States Constitution. However, we note that if there is a third alleged act, R.K. may reassert this argument should T.M. use the two letters to support a future c. 258E complaint for protection from harassment, which T.M. is entitled to do. When evaluating a c. 258E harassment prevention order, "the judge must 'examine the words and conduct in the context of the entire history of the parties' hostile relationship.'" G.B. v. C.A., 94 Mass. App. Ct. 389, 393-394 (2018), quoting Vittone v. Clairmont, 64 Mass. App. Ct. 479, 487 (2005). An allegation of harassment used to grant an earlier c. 258E harassment prevention order may be used in conjunction with new allegations of harassment when determining whether a new c. 258E harassment prevention order should issue. See G.B., supra. See A.P. v. M.T., 92 Mass. App. Ct. 156, 161 (2017) (noting analogous origin, purpose, and language of G. L. c. 209A and G. L. c. 258E). We also note that T.M. would still be required to prove that each of the three acts meets the statutory definition of harassment under G. L. c. 258E.

⁴ The panelists are listed in order of seniority.